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85-808

Supreme Court, U.S.
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CLERK

No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

UNITED STATES OF AMERICA,
PLAINTIFF - APPELLEE
VS.
LORRAINE D. GLEASON
DEFENDANT - APPELLANT

APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LORRAINE D. GLEASON
PRO SE
DEFENDANT - APPELLANT
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QUESTIONS PRESENTED FOR REVIEW

I. Whether or not the Court of Appeals errored in affirming the conviction of Lorraine D. Gleason in lieu of granting the sought after relief of granting a motion for a new trial, for arrest of judgement and for judgement of acquittal.

1. A variance that existed at trial between the conspiracy charged in the indictment and where multiple conspiracies were depicted by the evidence.

2. The Trial Court permitting the admission of co-conspirator's statements without regard to the foundational requirements set forth in the Federal Rules of Evidence 801(D)(2)(E).

3. The violation of Lorraine D. Gleason's sixth amendment of the United States Constitutional Right to Confrontation.

Grunewald v. U.S., 353 U.S. 391 (1957)

Lutwak v. U.S., 344 U.S. 604 (1953

Krulewitch v. U.S., 336 U.S. 440 (1949)

II. Whether the Court of Appeals errored in affirming the conviction of Lorraine D. Gleason in lieu of granting a motion for a new trial on the basis of the trial court's insistence on injecting question into the trial to such a degree as to preclude the Defendant-Appellant from having a fair trial.

Quercia v. U.S., 289 U.S. 466 (1933)

U.S. v. Blood, 697 F.2d 262 (1983)

Woodring v. U.S., 311 F.2d 417 (8th Circuit), Cert. Denied, 373 US 923 (1963)

U.S. v. Hickman, 592 F.2d 931 (1979)

III. Whether the Court of Appeals errored in depriving Lorraine D. Gleason of her rights under the Sixth Amendment of the United States Constitution to a speedy trial (18 USC 3161 (h) (6) by affirming the conviction and thereby not granting the motion to dismiss.

North Carolina v. Pearce, 395 US 711 (1933)

U.S. v. Arkus, 675 F.2d 245 (1982)

Rewis v. U.S., 401 US 808 (1971)

IV. Whether or not the Court of Appeals errored in affirming the conviction and thereby not granting the sought after relief. The Defendant-Appellant requested that her cross-examination exclude questions pertaining to a tax return of one Ralph Keeling.

Blackledge v. Perry, 417 US 21 (1974)

Simmon v. U.S., 390 US 377 (1968)

U.S. v. Burkhead, 646F.2d 1283 (1981)

V. Whether or not the Court of Appeals errored in affirming the conviction in lieu of granting a motion for a new trial, for arrest of judgement and for judgement of acquittal on the basis of the paucity of evidence as it pertains to Count III of the second indictment.

In Re Winship, 397 US 358 (1969)

U.S. v. Ross, 92 US 281 (1886)

U.S. v. Williams, 470F.2d 1339, Cert. Denied, 411 US 1339 (1973)

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NOTE OF PERTINENT DATES

July 27, 1983	Entered Guilty Plea
October 26, 1983	Sentencing
November 23, 1983	Withdrawal of Guilty Plea
December 9, 1983	First Indictment Returned
February 7, 1984	First Trial Began
March 5, 1984	Mistrial was Declared
March 13, 1984	Second Indictment Returned
April 23, 1984	Motion Filed to Dismiss for Speed Trial Act Violation
May 8, 1984	Second Trial Began
May 15, 1984	Guilty Verdict on all 3 Counts
July 6, 1984	Sentencing
July 13, 1984	Notice of Appeal Filed
November 12, 1984	Appellant's Brief Filed with the Court of Appeals
July 3, 1985	Filing of the Eighth Circuit Court of Appeals in Affirming Convictions

APPEAL STATEMENT

Appeal to the Supreme Court of the United States from the affirmation of convictions from the United States Court of Appeals for the Eighth Court.

The affirmation was filed on July 3, 1985.

The appeal was before the Honorable John R. Gibson, Circuit Judge, the Honorable Floyd R. Gibson, Senior Circuit Judge, and the Honorable Bowman, Circuit Judge.

PETITION FOR ORAL ARGUMENT

Lorraine D. Gleason, Defendant-Appellant herein petitions this Supreme Court of the United States for an oral argument on this appeal.

Defendant-Appellant is desirous of presenting an oral argument on the points of the appeal and to direct the Court's attention to the dominant issues:

Multiple conspiracies and use of hearsay evidence which was inadmissible and being unable to testify in one's own defense.

Violation of a right to a speedy trial.

One of the courts had insufficient evidence for conviction.

Court lacked jurisdiction under 18 USC 371.

Oral argument is deemed necessary for the proper discussion clarity and emphasis on the variances at issue and to enhance the administration of justice. Thus Lorraine D. Gleason respectfully requests thirty minutes for an oral argument.

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THE COURT IS INVOLVED

Courts have generally used 18 USCA 3231 as Jurisdiction.

Constitution Article III, Section 2:

"The judicial power shall extend to all cases in Law and Equity, arising under this Constitution, the Laws of the United States...".

Title 18 and 26 of the United States Code, Internal Revenue Code of 1939.

Sixth Amendment to the Constitution of the United States: "In all criminal prosecutions, the accused shall enjoy a right of a speedy and public trial by an impartial jury...to be confronted with witnesses against him (or her)...".

Article I, Section 9, Clause 3 of the Constitution of the United States: "No Bill of Attainder or expost facto law shall be passed...".

STATUTORY PROVISIONS WHICH CONFER JURISDICTION UPON THE SUPREME COURT OF THE UNITED STATES

Courts have generally used 18 USCA 3231

Article III, Section 2: "The Statutes under which the appellant was convicted 26 USCA 7206(2) and 18 USCA 371 by way of 18 USC 3231 and 26 USCA 7851(C) 1939 Internal Revenue Code, Section 3736(1)

Constitution of the United States Sixth Amendment

Article I Section 9, Clause 3

TABLE OF CASES

Blackledge v. Perry, 417 U.S. 21 (1974);

Boyd v. U.S., 116 U.S. 616 (1886);

Brushber v. Union Pacific R.R. Co., 240 U.S. 1 (1915);

Forman v. U.S., 361 U.S. 416

Geders v. U.S., 425 U.S. 80 (1976);

Grunewald v. U.S. 425 U.S. 80 (1976);

In re Jenison, 375 U.S. 14 (1963);

In re Winship, 397 U.S. 358, 25 L Ed 2d 368, 90 SCT 1068, 51 O HIS OPS 2d 323;

Jackson v. Virginia, 443 U.S. 307 (1979);

Keyishian v. Board of Regents, 385 U.S. 589 (1967);

Krulewitch v. U.S., 336 U.S. 440, 695 CT 716, 93L Ed 790 (1949);

Kotteakos v. U.S., 328 U.S. 750 (1946);

Lutwak v. U.S., 344 U.S. 604, 735 LT 481, 97 L Ed 593 (1953);

Miranda v. Arizona, 384 U.S. 436 (1966);

TABLE OF CASES

(Continued)

North Carolina v. Pearce, 395 U.S. 466 (1933);

Quercia v. U.S., 289 U.S. 466 (1933);

Rewis v. U.S., 401 U.S. 808 (1961);

Sherbert v. Verner, 374 U.S. 398 (1963);

Simmons v. U.S., 390 U.S. 377 (1968);

U.S. v. Arkus, 675 F.2d 245 (9th Circ. 1982);

U.S. v. Ball, 428 F.2d 26 (1970);

U.S. v. Bland, 697 F.2d 262 (1983);

U.S. v. Burkhead, 646 F.2d 1283 (8th Cir.), cert. denied, 454 U.S. 898 (1981);

U.S. v. Carabbil, 381 F.2d 133 (1967);

U.S. v. Hickman, 592 F.2d 931 (1979)

U.S. v. Hoker, 483 F.2d 359, (1973);

U.S. v. Lanham, 416 F.2d 1140 (1969);

U.S. v. Lewis, 338 F.2d 137 (1964);

U.S. v. Ross, 92 U.S. 281 (1886);

U.S. v. Williams, 470 F.2d 1339 (8th Cir.); cert. denied, 411 U.S. 1339 (1973);

Woodring v. U.S., 311 F.2d 417 (8th Cir.), cert. denied

TABLE OF STATUTES

18 U.S.C. Sections 3161, 371 3131

18 U.S.C. Federal Rules of Criminal Procedure

28 U.S.C. Federal Rules of Civil Procedure

26 U.S.C. Sections 7206 (2), 7851 (c)

28 U.S.C. Section 1291

Internal Revenue Code of 1939, Section 3736 (1)

CONSTITUTION OF THE UNITED STATES

Article 1, Section 9

Article 9, Section 1

Sixth Amendment

Article 3, Section 2

Background Information and Statement of the Case

During 1981, Lorraine D. Gleason, assisted her husband, Michael J. Gleason, at Tax and Accounting Service in Independence, Missouri.

George Leigh, a Universal Life Church (ULC) Minister formulated false and fraudulent church receipts for tax deductions. The individuals arguing the receipts brought them to Gleason's Tax and Accounting Service for preparation. Reverend Leigh was provided office space in the same building.

Only Michael J. Gleason assisted in the preparation of the income as the tax service. The Government contends that both Lorraine D. Gleason and Michael J. Gleason assisted in the preparation of the income tax returns.

The U.L.C. is non-profit religious corporation headquartered in Modesto, California. The church is tax exempt 26 USC 501 (c) (3).

Such emphasis was placed on ULC that many issues were inculcated into the situation resulting in confusion and vagueness. Although Michael J. Gleason and Lorraine D. Gleason were members of the ULC, neither of them ever attended a church meeting where there was a discussion of taxes. Never was there even circumstantial evidence to the contrary.

On July 27, 1983, Lorraine D. Gleason pled guilty to a one count information of acting and assisting in the preparation of the false and fraudulent income tax return of Ralph Keeling. During the plea, the Defendant-Appellant had difficulty remembering the incident involving Ralph Keeling.

At sentencing on October 26, 1983, the Defendant-Appellant was unable to reconstruct (remember) the Keeling incident. Consequently, the Honorable D. Brook Bartlett did not sentence her. The guilty plea was voided on November 23, 1983.

On December 9, 1983, Gleason was indicted along with J.C. Baxter, an alleged co-conspirator. A jury trial commencing on February 27, 1984 before the Honorable Scott O. Wright resulted in a mistrial on March 5, 1984, because the jury failed to reach a verdict.

On December 9, 1983, Gleason was indicted along with J.C. Baxter, an alleged co-conspirator. A jury trial commencing on February 27, 1984 before the Honorable Scott O. Wright resulted in a mistrial on March 5, 1984, because the jury failed to reach a verdict.

On March 13, 1984, Gleason was reindicted. Her second jury trial began on May 7, 1984 before the Honorable Joseph E. Stevens.

The trials of February 27, 1984 and May 7, 1984 were in the United States District Court for the Western District of Missouri.

Defendant-Appellant was convicted by jury verdict on May 15, 1984 on three counts.

Count I: Conspiracy to defraud the United States by obstructing the Department of Treasury in collection of income taxes in violation of 18 USC 371.

Count II and III: Two counts of aiding or assisting in the preparation of fraudulent income tax returns in violation of 26 USC 7206(2).

On July 6, 1984 the Defendant-Appellant was sentenced by the district court to two years imprisonment, with eight months suspended and three years probation to commence upon her release from incarceration, plus a $1000.00 fine and court costs of $12,395.00 on Count I. On Counts II and III, the Defendant-Appellant was sentenced to three years probation on each count, to be served concurrently with each other and Count I.

The Defendant appealed the judgement of conviction and the sentence imposed by the Honorable Joseph E. Stevens, Senior Judge, United States District Court for the Western District of Missouri, Case No. 83-00170-01-CR-W-5.

On July 13, 1984, a Notice of Appeal was filed by the Defendant-Appellant. On November 12, 1984 the Appellant's Brief was filed in the United States Court of Appeals for the Eighth Circuit, Case No. 84-1913-WM.

The United States Court of Appeals for the Eighth Circuit filed its opinion affirming the conviction on July 3, 1985.

The decision was filed on July 3, 1985 giving rise to this Petition for Writ of Certiorari.

Added Notes: The Defendant-Appellant's husband pleaded guilty to a count pursuant to 18 USC 371 and a count pursuant to 26 USC 7206(2) and was sentenced on October 26, 1983.

Around the same time period a plea of nolo contendere was entered for George Leigh.

In March of 1984, J.C. Baxter entered a plea of guilty.

QUESTION I

The cover up concealment was not part of the original conspiracy without specific agreement at the conception of the conspiratorial act. Circumstantial evidence or influences are not sufficient to prove a cover up agreement. In both trials the Government was disposed toward introduction of cover up evidence on the basis of its being inhonestly coupled to an original conspiratorial agreement.

Cover up was never shown - not with one solitary discussion with anyone even remotely associated could conjure up even circumstantial evidence that the Defendant-Appellant had even thought of a cover up. More than circumstantial evidence is required to show conspirators took care to cover up their crime to avoid punishment. Grunewald v. United States 353 US 391, 40777 S.Ct. 963, 972, 1L Ed 2d 931 (1957) and Lutwak v. United States, 344 US 604,73 S.Ct. 481, 97 L Ed 593 (1953).

Defendant-Appellant further argues that a statement was never made in the course nor in furtherance of the conspiracy required by Federal Rules of Evidence 801(d)(2)(E).

Government introduced into evidence acts of others associated with the Universal Life Church.

This connotated evidence of a third tax fraud conspiracy and was characterized by admission of heresay allegations. One example is the flagrant tape recording of a telephone conversation between witness Diane Hart and Rev. George Leigh which was replete with regard to a cover up. In this realm the Defendant-Appellant was deprived of her right to a trial separate from the acts of others. Co-conspirator's statements by persons not available for confrontation violated Sixth Amendment Rights when these statements were permitted to be introduced as evidence. There was a variance between the conspiracy charged in indictment and the evidence produced at trial.

There was an incompatibility between the conspiracy charged in the indictment and the showing of multiple conspiracies is the evidence in violation of the Federal Rules of Evidence - Rules 404(b) and 80i(d)(2)(E). This initiates two conspiracies -- one to defraud the United States and second to conceal the fraud. The Appeals Court errored in determining that the successful accomplishment of the crime necessitates concealment. The Court of Appeals alluded to a conspiracy covered by 18 US 6371 to necessarily contemplate acts of concealment to accomplish its objectives. One question and one issue is involved is the realm. How does a conspiracy under 18 US 6371 differ from any other conspiracy?

The issue pertains to jurisdiction over the Defendant - Appellant by way of 18 USC 3231 to 18 USC 371. Criminal jurisdiction does not arise from 2.6 USC 7206(2) to Title 18. This is a fatal variance of a jurisdictional question. Section 3231 of Title 18 does not have any jurisdiction

over tax crimes. Section 7106(2) of Title 26, the section of the code charged in the case at hand might have jurisdiction under the 1939 Internal Revenue Code. There and there alone may lie jurisdiction over tax crimes - but not in Title 18. (Title 26 was formulated in 1954. Section 7206(2) of this title cites its source as IRC 1939. Title 18, which was formulated in 1948 is not even mentioned.)

The Defendant-Appellant's position is that the Court is void of jurisdiction and, secondly, there is a decisive absence of my evidence to indicate the existence of an agreement to conceal the initial conspiracy. (Evidence of a cover-up or concealment would be evidence of a second conspiracy.) Only the second indictment contained the elements to cover up. Evidence of cover-up which was not permitted in the first trial, was admissible in the second trial. The end result portrayed the Defendant-Appellant as involved in a multiple conspiracy. It was inadmissible heresay and its admission for use against the Defendant-Appellant was prejudicial error.

QUESTION II

The court exceeded its discretion and indulged in improper and unnecessary questioning and comment to such a degree as to prejudice the Defendant-Appellant's right to a fair trial.

The Defense argues that on several occasions during the course of the trial, the District Court improperly injected itself on behalf of the Government. Such misconduct was of such a magnitude that it prejudiced her by depriving her of a fair trial.

It is automatic that a judge must preserve an attitude of impartiality and guard against giving the jury an impression that the Court believes the Defendant is guilty.

A balancing process must be formulated to determine whether the Court's comments have persuaded the jury out-tipped the balance to such a magnitude as to adversely affect the Defendant. It is the Defense's contention that the scale was tipped. It is imperative for the Judge to main-

tain a color of neutrality and not tend to accentuate and emphasize the Government's case. It is contended by the Defense that the Court assumed the advocate and took over the cross-examination for the Government and thereby emphasized the Government's questions as to the credibility of the witness. Indication, as such, depicts favoritism toward the Government and had a deleterious effect (via the jury) on the Defendant-Appellant. US v. Bland, 697 F.2d 262 (1983).

In the case at hand, the Court's constant questioning of a witness, one Bishop Imbeau, devastated his credibility and was simultaneously deleterious to the Defendant-Appellant.

Bishop Imbeau was the primary and perhaps only witness to lend credibility to the Universal Life Church as it relates to Defendant-Appellant in 1981. From the gist of the Court's "handling" of the witness, any reasonable and prudent juror would be left with the impression that the Universal Life Church was an elaborate tax scam and

should extend to the Defendant-Appellant as a primary inference of criminal mens creed.

Failure of Defense Counsel to frequently object at the trial should not preclude in any fashion the Court from considering this vital issue. The Court of Appeal errored by citing the failure of Defense Counsel to object. It would have been difficult and hazardous to frequently object in the presence of the jury to question and statements propounded by the trial court. United States v. Hickman, 592 F.2d 931 (1979). There was plain error by the trial court.

QUESTION III

The Speedy Trial Act was violated, that having a deleterious effect on the Defendant-Appellant is defidence to her Sixth Amendment rights.

In defidence to the Sixth Amendment and the Speedy Trial Act of 1974, the Court of Appeals upheld the decision of the District Court.

On July 27, 1983 Defendant-Appellant waived indictment and pled guilty to one count of violating 28 USC 72061(2). On November 23, 1983, the guilty plea was withdrawn and on December 5, 1983 she was indicted.

On February 27, 1984 th trial commenced on the first indictment, which resulted in a "hung jury" mistrial on March 5, 1984.

On March 13, 1984 a different indictment was returned against the Defendant-Appellant. It was this second indictment that was used for the second trial that resulted in a conviction. The second indictment vastly enlarged the previous

indictment by including efforts to conceal the conspiracy.

This enhances the variance of both the Speedy Trial Act violation and the contention that evidence of a "cover-up" was inadmissible evidence of multiple conspiracies. The first trial did not result in a conviction. The evidence pertaining to multiple conspiracies was not admitted. The Government moved to expand the indictment by including efforts to conceal the conspiracy with the objective of conviction. The intent of the Speedy Trial concept was defeated. The first indictment was not dismissed until after sentencing under the new indictment. The Government cannot acquire or even expect to acquire a second seventy days. This is tantamount to manipulating the indictment, and is analogous to substituting one charge for one of a more serious nature, North Carolina v. Pearce, 395 US 711, 89 St. 2072, 23 L. Ed. 2d 656.

On May 7, 1984 the second trial began and resulted in a conviction on May 15, 1984.

Under the provisions of 18 USC 3161 (h)(6), the section which applies to this case, the seventy day period expired prior to May 7, 1984. The Appellant was thus entitled to dismissal, even considering excludable time.

The Defendant-Appellant does not raise as an issue that a trial should take place or an identical indictment following a mistrial, nor does she contend that the return of the second indictment in effect dismiss the first indictment. These issues were alluded to by the Court of Appeals in upholding the conviction. The Defendant-Appellant merely states that the Government straddled between the two indictments and held the first indictment open while substantially changing the first indictment by inclusion of a conspiracy to conceal. By these very actions of leaning on one indictment while prosecuting on a second indictment, the seventy day limit including excludable time was reached by at least twelve days before the start of the trial

that led to conviction. Thus the Court of Appeals errored in not recognizing the magnitude of the change in the second indictment and contending that the first indictment did not have to be dismissed. Such a conclusion is tantamount to providing the Government with a second seventy day period. This would defeat the very purpose of the interest of the Speedy Trial Act and as such calls for dismissal under Federal Rules of Criminal Procedure 48(g).

QUESTION IV

The Defendant-Appellant's right to testify on her behalf was constrained by a threat of perjury.

On July 27, 1983, the Defendant-Appellant pleaded guilty to a single count of violation of 26 USC 7206 (2). The tax in question was one of a Ralph Keeling.

Upon entering her plea of guilty, the Defendant-Appellant alluded to having knowledge of the

fraudulent return of Ralph Keeling. At sentencing on October 26, 1983, she was unable to recall any such knowledge to any degree. Consequently the Honorable Brook Bartlett withdrew the guilty plea on November 23, 1983.

The United States Attorney was emphatic that if Lorraine Gleason testified, she would be confronted as to her knowledge of the fraudulenting of the Keeling return. If she denied knowledge, the United States Attorney stated that he would confront her with a perjury charge.

The Defendant-Appellant, most desirous of testifying, had an option to testify on her behalf and be confronted with the probability of another indictment for perjury or remain silent and thus surrender without forebearance a Constitutional guarantee reinforced by Rule Eleven of the Federal Rules of Criminal Procedures her right to testify on her behalf.

The Keeling return was this remote from any counts brought against Lorraine Gleason at her

second trial. It was not even mentioned in the conspiracy count of the indictment. For the Government to refrain from inquiry regarding the Keeling return would not have prejudiced the Government's case. The cross examination would have been beyond the scope of direct examination. Consequently it would be inadmissible under Rule 611(b), Federal Rules of Evidence.

The threat of perjury was effective in preventing the Defendant-Appellant from testifying. Lorraine Gleason was deprived of a constitutional right to a fair trial without apprehension of retaliation. It borders on vindictive prosecution. Blackledge v. Perry, 417 US 21.

QUESTION V

The evidence as to Count III was insufficient to uphold the conviction.

This count pertains to the tax return of a Charles and Nora Blankenship, wherein the Defendant-Appellant was convicted of willfully and knowingly aiding and assisting in the preparation of a fraudulent tax return, Section 7206(2) of Title 26. This specific section of the code does not extend jurisdiction to Title 18 for Criminal prosecution.

The evidence is void of material ties of fact and obviously does not support guilt beyond a reasonable doubt. One must act willfully and with knowledge.

The Blankenships could not substantiate, nor did they attempt to, that the Defendant-Appellant prepared their taxes, Charles and Nora Blankenship never had a conversation with Lorraine Gleason concerning the Universal Life Church.

The only evidence was vague statements made by the Blankenships.

The law presupposes as an essential due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to formulate a tier of fact beyond reasonable doubt as to the existence of every element of the offense, In re Winship, 397 US 348.

CONCLUSION WITH REITERATION OF QUESTIONS I AND III AND JURISDICTIONAL DEFECT

There is an interrelation between the Speedy Trial and the expansion of the indictment to a cover-up of a conspiracy which probably in the court's mind permitted the introduction of inadvisable evidence.

In a sense they are mutually exclusive.

The magnitude of the change is in the indictment and the insistence of the Appeal Court that

the Speedy Trial Act applies under 18 USC 3161(e) in lieu of 18 USC 3161(h)(6) are incompatible.

Section 371 of Title 18 was cited as a different type of conspiracy by the Appeals Court. Where is the jurisdiction of 18 USC derived from to criminally prosecute one under 26 USC 7206(2)?

Reference, 80th Congress, 2d Session, Senate Calendar No. 1675, Report No. 1620, quoted verbatum:

> "The purpose of the bill is to codify and revise the laws relating to Federal crimes and criminal procedure."
>
> "With the amendments proposed by the committee the bill includes all pertinent laws to January 5, 1948 and is made effective September 1, 1948."
>
> "The bill makes it easy to find the criminal statutes because of the arrangement, numbering and classification. The original intent of Congress is preserved."
>
> "This amendment is necessary to

preserve the provisions of section 371(1) of Title 28, United States Code, 1940 edition, giving the district court of the United States original jurisdiction of all offenses against the laws of the United States, exclusive of State Courts."

The preceeding becomes 18 USC Section 3231. It was adopted from 28 USC Section 371(1). Section 3231 does not give blanket jurisdiction as implied in the case at hand. The following as referenced from Title 18, Section 3231 enhances this statement.

I. GENERALLY

Starts with accessory, jurisdiction over, acquisition of jurisdiction, etc.

Ends with waiver of priority of jurisdiction.

NOTE: Nowhere are taxes mentioned or even implied.

II. SCOPE AND PRIORITY OF JURISDICTION

Starts with Generaliy, Acquisition of jurisdiction, Admiralty and Maritime offenses,

territorial extent of jurisdiction, etc.

Ends with waiver of priority of jurisdiction.

NOTE: No where are taxes even implied.

III. JURISDICTION OF PARTICULAR CRIMES OR OFFENSES.

Starts with bankruptcy frauds, banks, offenses against, bribery, etc.

Ends with treason.

NOTE: No where are taxes as a crime or offense even implied.

Title 26, Section 5557, USC, Subtitle E taxes imposed for special privileges (fuels, tobacco, etc). It does not extend to other subtitles of the code.

Title 18, USC, Section 3231 does not have jurisdiction over tax crimes. Nowhere can this be shown. Section 3231 was made effective in September of 1948. It did not create new laws or new jurisdiction. Specifically, it pertained to all pertinent laws to January 5, 1948.

The bill makes it easy to find the criminal statutes because of the arrangement, numbering and classification. Nowhere is a tax crime listed.

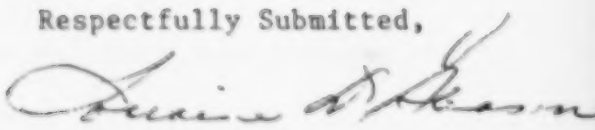
Title 18, USC would further not have any jurisdiction over tax crimes because it was re-incoded in 1948. The 1939 IRC was still in full force and effect until, when in 1954 Title 26 was adopted. However, as noted in 26 USC 7851(c), IRC 1939 is still in full force and effect.

Section 7851(c) of Title 26, Crimes and Forfeitures, states "All offenses committed, and all penalties as forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted."

Thus if jurisdiction for tax crimes does exist, it would be from 1939 IRC. Cases involving 26 USC 7206(2) may be prosecutable through the jurisdiction of 1939 IRC, but not Title 18, USC Sections 3231 through to 18 USC 371. This jurisdiction is non-existent.

The Defendant-Appellant seeks the relief of judgment of acquittal or arrest of judgment for lack of jurisdiction and ruling of judgment based on the evidence and that all judgments, decrees and orders be dismissed with prejudice or is the alternative, the remanding of the case for a new trial.

Respectfully Submitted,



Lorraine D. Gleason 10 31 9
Pro se
Defendant-Appellant

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-1913

United States of America,	*	
	*	
Appellee,	*	Appeal from the
	*	United States
	*	District Court for
v.	*	the Western
	*	District of
	*	Missouri.
Lorraine D. Gleason,	*	
	*	
Appellant.	*	

Submitted: March 14, 1985

Filed: July 3, 1985

Before JOHN R. GIBSON, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and BOWMAN, Circuit Judge.

FLOYD R. GIBSON, Senior Circuit Judge.

Defendant Lorraine D. Gleason appeals from the district court's[1] judgment entered on a jury verdict convicting her on one count of conspiracy to defraud the United States by obstructing the Department of Treasury in collection of income taxes in violation of 18 U.S.C. § 371, and two counts of aiding in the preparation of fraudulent income tax returns in violation of 26 U.S.C. § 7206(2)[2]. On July 6, 1984, the district court sentenced Gleason to two years imprisonment on the conspiracy count, with all but six months suspended, and three years probation to begin upon her release from custody, plus a $1,000 fine. On the remaining two counts, the court sentenced Gleason to three years probation on each count, to

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[1]The Honorable Joseph E. Stevens, United States District Judge for the Western District of Missouri.

[2]Count Two charged Gleason with aiding and abetting in the preparation of the 1980 fraudulent tax return of Orville and Diane Hart. Count three made a similar charge as to the 1980 tax return of Nora and Charles Blankenship.

be served concurrently with each other and with the probation sentence imposed on the conspiracy count. Gleason appeals to this court, arguing that a variance existed at trial between the conspiracy charged in the indictment and the evidence shown at trial; that the trial court impermissibly acted as an advocate at trial; that her rights to a speedy trial were violated; that the trial court erred in refusing to limit potential cross-examination of her; and that the evidence as to Count Three of the indictment was insufficient to sustain a guilty verdict. We affirm.

I. FACTS

In 1981, Lorraine Gleason worked with her husband Michael J. Gleason at Gleason's Tax and Accounting Service, a sole proprietorship owned by Michael Gleason in Independence, Missouri. Both Michael and Lorraine Gleason were members of the Universal Life Church, as was George Leigh, who occupied a separate office in the same building as the tax service. The Universal Life Church is a non-profit, religious corporation headquartered in

Modesto, California. The Universal Life Church operates through "mail order ministries", through which anyone can be ordained as a minister and have conferred upon him ministerial credentials and powers. The ministers have no required duties, nor does the church have any established creed or doctrines. The Universal Life Church also issues "mail order church charters," through which as few as three people can be designated as a congregation. The members of the congregation may be members of the same family. Once ordained, a minister may donate to the church the earnings from his regular occupation, by placing the money into his congregation's bank account. In so doing, the minister receives a charitable contributions deduction of up to 50 percent of his gross income, with a corresponding reduction in income tax liability. The minister may then withdraw money from the account, tax-free, for the upkeep of the "church" (his home), and his living expenses, including food and lodging. The "Mother

Church" in Modesto requires only that the congregation file a regular report.

The evidence at trial showed that both Michael and Lorraine Gleason prepared fraudulent income tax returns for various clients for the 1980 tax year. Typically, either Michael or Lorraine Gleason, or both, would conduct a preliminary interview with taxpayers, during which the taxpayers would produce necessary information to prepare their tax returns. Then either Michael or Lorraine Gleason would inform the taxpayers that more deductions would either decrease their tax liability or increase their tax refund. The Gleasons would refer the taxpayers to George Leigh, who would sell them receipts falsely stating that the taxpayers had made contributions to the Universal Life Church during 1980. Leigh sold the receipts for a small percentage of the

stated contributions.[3] Either Michael or Lorraine Gleason would prepare returns for the taxpayers reflecting these bogus contributions, and the receipts were attached to the returns. If any taxpayer expressed concern about the possibility of audits, he or she would be assured by either Michael or Lorraine Gleason or George Leigh that the Universal Life Church would corroborate the claimed contributions.

Lorraine Gleason sought to establish as a defense at trial that she played no part in the conspiracy, and that her position at the tax service was merely that of a receptionist. Gleason insisted that she had not prepared any of the fraudulent returns but merely copied over returns sloppily prepared by her husband, or signed her name as preparer when he was too busy

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[3]For example, the evidence at trial showed that Dale Bedsaul received from George Leigh receipts reflecting a total 1980 contribution of $9,000 to the Universal Life Church. Bedsaul paid Leigh $160 for the receipts. Ralph Keeling obtained receipts from Leigh representing a total 1980 contribution of $12,000; Keeling paid $60 or $65 for the receipts. James Massey paid Leigh $60 for receipts reflecting a $22,000 contribution to the Universal Life Church in 1980.

to sign his own name. The testimony at trial, however, showed that Lorraine Gleason had informed Orville and Diane Hart how they could receive a bigger refund by purchasing phoney receipts from George Leigh. Gleason also filled out the Harts' receipts, signed their return as the preparer, and told the Harts not to worry about the validity of the deductions because the receipts substantiated the claimed contributions. Further, Lorraine Gleason was present when her husband informed Nora and Charles Blankenship about the availability of the false receipts and told them to contact George Leigh. She later attached the receipts that the Blankenships obtained from George Leigh to a completed tax return, which she had signed a preparer.

Lorraine Gleason pled guilty on July 27, 1983 to a one-count information charging her with aiding and assisting in the preparation of the false and fraudulent income tax return of taxpayer

Ralph Keeling, in violation of 26 U.S.C. § 7206(2).[4]. Gleason withdrew her guilty plea on November 23, 1983, and was indicted along with an alleged co-conspirator, J.C. Baxter, on December 9, 1983. A jury trial began on February 27, 1984, before the Honorable Scott O. Wright of the United States District Court for the Western District of Missouri. The court declared a mistrial on March 5, 1984, because the jury was unable to reach a verdict. Gleason was subsequently reindicted, and retried before Judge Stevens on May 7, 1984, resulting in the convictions from which she now appeals.

A. Variance

Gleason first contends on appeal that the district court erred in denying her motion for a new trial, for arrest of judgment, and for judgment of acquittal based on her allegation that a

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[4]Michael Gleason entered a plea of guilty on the same day to a charge pursuant to 26 U.S.C. § 7206(2) with respect to the 1980 income tax return of Patrick Goldsworthy.

variance existed between the conspiracy charged in the indictment and the evidence produced at trial. She asserts that the district court erred in admitting evidence, in the form of a co-conspirator's statements, of the "cover-up" or concealment of the fraud, because the cover-up was not within the scope of the conspiracy charged in the indictment[5]. Thus, Gleason's argument goes, the Government introduced evidence at trial as to multiple conspiracies -- the initial conspiracy to defraud the United States and a second conspiracy to conceal the fraud. Gleason cites Grunewald v. United States, 353 U.S. 391 (1957), in support of her claim that the admission of the cover-up evidence caused an impermissible variance from the

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[5]The first indictment against Gleason did not specifically mention the concealment efforts. In the trial on this indictment, which ended in a mistrial, Judge Wright did not admit the concealment evidence. When Gleason was reindicted, the superseding indictment, on which she ultimately was convicted, did refer to the concealment.

indictment. Because of the variance between the lone conspiracy count in the indictment and the evidence produced as to multiple conspiracies, Gleason contends her conviction should be reversed. We hold that the cover-up evidence was properly admitted and that no variance existed here. In citing Grunewald, Gleason overlooks the Court's direction in that case to distinguish "between acts of concealment done in furtherance of the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." 353 U.S. at 405 (emphasis in original). When "[t]he successful accomplishment of the crime necessitates concealment," acts of concealment are properly considered to be within the scope of the original conspiracy. Id. We agree with other courts that have held that a conspiracy covered by 18 U.S.C. § 371, such as the one charged here, necessarily contemplates acts of concealment to accomplish its objectives. See United States v. Mackey, 571 F.2D

376, 383-84 (7th Cr. 1978); United States v. Diez, 515 F.2d 892, 897-98 (5th Cir. 1975), cert. denied, 423 U.S. 1052 (1976). See also Forman v. United States, 361 U.S. 416 423-24 (1960), overruled on other grounds, Burks v. United States, 437 U.S. 1 (1978). As the Fifth Circuit stated in Diez,

> (I)n the present case the central aim of the conspiracy was to deceive officials of the Internal Revenue Service, thereby inducing them to accept fraudulent tax returns as truthful and accurate. In light of the substantial possibility that the returns would be audited and investigated, the filing of the returns did not fully accomplish the purpose of the main conspiracy, which by its very nature, called for concealment.

515 F.2D at 897-898. Because the co-conspirators' concealment attempts were part of the original conspiracy, no variance existed and the concealment evidence was properly admitted.

II. Alleged Misconduct of Trial Judge

Gleason next asserts that the trial court erred in denying her motions for a new trial and for a mistrial based on her allegations that the

trial judge's misconduct deprived her of a fair trial.

Specifically, Gleason contends that the trial judge impermissibly interjected himself into her trial by questioning witnesses, particularly Bishop Imbeau of the Universal Life Church headquarters in Modesto; calling for Bishop Imbeau to produce certain evidence, and commenting on the evidence, all to her prejudice. In support of her argument Gleason cites us to many places in the transcript that she deems examples of the judge's misconduct.

We have reviewed the transcript carefully and conclude that the trial judge did not overstep the bounds of propriety. First, we note that at least a few of the transcript pages to which Gleason refers us contain no comments by the trial judge at all, while others contain comments made by the judge out of the presence of the jury, thus averting any chance of prejudice. Other passages cited by Gleason consist of comments made by the judge to the prosecutor or defense counsel,

including rulings on objections. Still other comments by the judge appear in the record as having been made in the presence, but out of the hearing, of the jury. Gleason's counsel contends that one such comment in particular, when the judge stated that a witness had been "dead wrong" in his testimony concerning the tax free benefits of ministers, was audible at the counsel table and therefore probably to the jury as well. Counsel, however, did not make a contemporaneous objection to the comment. Had an objection been made at the time of the perceived error, the trial court would have had the opportunity to determine whether members of the jury had in fact overheard the comment. In the absence of such an objection, however, and because the record reflects that the comment was made out of the jury's hearing, we find that no plain error warranting reversal exists. See United States v. Ellis, 747 F.2d 1205, 1208 (8th Cir. 1984).

A trial judge is more than a "mere moderator" of a trial. United States v. Woods, 696 F.2d

566, 570-71 (8th Cir. 1982) (quoting Dranow v. United States, 307 F.2d 545, 572) (8th Cir. 1962).

> (The trial judge) has the prerogative, and at times the duty, of eliciting facts he deems necessary to the clear presentation of the issues. To this end he may examine witnesses who testify, so long as he preserves an attitude of impartiality and guards against giving the jury an impression that the court believes the defendant is guilty.

Llach v. United States, 739 F.2d 1322, 1329-30 (8th Cir. 1984) (quoting Dranow, 307 F.2d at 572). Those questions that the trial judge did ask of witnesses were properly intended to clarify testimony and elicit necessary facts; the judge's questioning did not become so one-sided as to deprive Gleason of a fair trial. See United States v. Bland, 697 F.2d 262, 265 (8th Cir. 1983) (when trial judge has made allegedly prejudicial comments, appeals court must use balancing process to determine whether such comments have "pervaded over-all fairness" of proceedings). In sum, the trial court did not err in denying Gleason's

motions for a new trial and for a mistrial based on alleged misconduct.

III. Alleged Violation of Speedy Trial Act

Gleason also contends that her right to a speedy trial pursuant to the Speedy Trial Act, 18 U.S.C. §§ 3161 - 3174 (1982), was violated in this case. For consideration of this issue we review the relevant dates involved. Gleason originally waived indictment and pled guilty to a one-count information on July 27, 1983. The district court subsequently allowed her to withdraw her guilty plea November 23, 1983. The grand jury then handed down a nine-count indictment against Gleason and J.C. Baxter, in which Gleason was named in seven of the nine counts. Upon defense counsel's motion, the magistrate on January 9, 1984 ordered that the trial be continued from its scheduled January 23, 1984 starting date until February 27, 1984. After the case was tried, beginning on February 27, and submitted to the jury, the district court ordered a mistrial on

March 5, 1984, because the jury was unable to reach a verdict. Baxter subsequently entered a guilty plea.

On March 13, 1984, the grand jury returned a new indictment against Gleason. This superseding indictment contained three counts. Count One charged a conspiracy based upon the same acts that served as the basis for the conspiracy charged in Count One of the previous indictment, but added a paragraph specifically including as part of the conspiracy actions taken to cover up the fraud. Counts Two and Three of the superseding indictment were identical to Counts Seven and Eight of the first indictment. The remaining charges in the previous indictment were dropped from the superseding indictment.

Gleason was arraigned on the new indictment on March 21, 1984, and the district court set the matter for trial on May 7, 1984. Gleason filed a motion to dismiss the case on April 25, based on alleged violations of the Speedy Trial Act,

asserting that Speedy Trial computation should be governed by 18 U.S.C. § 3161(h)(6).[6] The district court denied the motion in an order filed April 26, 1984, citing 18 U.S.C. § 3161(e), which provides 70 days for the retrial of a case that ended in a mistrial.[7]

Trial on the superseding indictment began on May 7, 1984, with the jury returning its guilty verdict on May 15. The Government subsequently moved to dismiss the first indictment against Gleason.

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[6] 18 U.S.C. § 3161(h)(6) states:

> If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge (shall be excluded in computing the time within which the trial of any such offense must commence).

[7] 18 U.S.C. § 3161(e) states in relevant part: "If the defendant is to be tried again following a declaration of the trial judge of a mistrial ***, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final."

On appeal to this court Gleason argues that the district court erred in denying her motion to dismiss based on the Speedy Trial Act. She repeats her contention that section 3161(h)(6), rather than section 3161(e), applies. Gleason claims that the superseding indictment differs greatly from the initial indictment, and that the Government benefited from the alterations because it had fewer charges to prove and more evidence (from the broadening of the conspiracy count) with which to prove them. Because under section 3161(h)(6) the 70-day time period within which she could be tried expired before May 7, 1984, the indictment should have been dismissed with prejudice under 18 U.S.C. § 3162(a)(2).

We agree with the district court that section 3161(e) applies to Gleason's case. Section 3161(e) plainly addresses the circumstance that warranted retrial in this case: the declaration of a mistrial. By its terms, section 3161(e) requires that a defendant be retried within seventy days of

the declaration of a mistrial. Gleason's trial on May 7, 1984, was within seventy days of the March 5th declaration of mistrial. Gleason would have us read into section 3161(e) a condition that does not exist -- namely, that a defendant must be tried on the identical indictment following a mistrial -- and asks us to apply section 3161(h)(6).

We do not think section 3161(h)(6) can be applied without some distortion. That section expressly covers the circumstance when the Government moves to dismiss an indictment and thereafter a charge is filed for the same offense. Here, however, the second indictment was filed before the first indictment was dismissed. Thus by its terms section 3161(h)(6) dose not apply to Gleason's situation. See United States v. McCown, 711 F.2d 1441, 1446 (9th Cir. 1983); United States v. Horton, 676 F.2d 1165, 1170 (7th Cir, 1982), cert. denied, 459 U.S. 1201 (1983). C.F. United

States v. Harris, 724 F.2d 1452, 1454 (9th Cir. 1984) (construing similar language in 18 U.S.C. § 3161 (d)(1)). Gleason argues that the return of the second indictment in effect dismissed the first indictment against her, so that no excludable delay exists under section 3161(h)(6). She cites us to no cases, however, which hold that a superseding indictment automatically dismisses an original indictment, nor have we found any such authority. Based on a plain reading of the statute, then we agree with the district court that section 3161(e)(6) specifically controls this situation and that Gleason's rights under the Speedy Trial Act were not violated.

IV. District Court's Refusal to Limit Potential Cross-Examination of Gleason. Gleason next assigns as error the district court's refusal to limit in advance the Government's cross-examination of her should she take the stand. When Gleason pled guilty on July 27, 1983 to the one-count information, she stated under oath that

she knew the receipts attached to the tax return of Ralph Keeling were fraudulent. The district court later allowed Gleason to withdraw her guilty plea. Before this case went to trial, the prosecutor indicated that if Gleason elected to take the stand, he would question her about the Keeling return. If Gleason then testified that she did not know the receipts were fraudulent when she attached them to the Keeling return, the prosecutor stated that he would be compelled to seek a perjury indictment against her for contradicting her prior sworn statement.[8]

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[8]The prosecutor would not have been able to confront Gleason with her prior statements because Rule 11(e)(6)(C) of the Federal Rules of Criminal Procedure provides that statements made by a defendant in the course of a proceeding regarding a guilty plea, which is later withdrawn, are not admissible against the defendant in any civil or criminal proceeding. Rule 11(e)(6)(D)(ii), however, allows as an exception to the general rule that such a statement is inadmissible "in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel." See also Rule 410 of the Federal Rules of Evidence.

Gleason thus asked the district court to rule before trial that the Government would not be able to cross-examine her about the Keeling return. The court refused to so limit the questioning, and Gleason did not testify.

Gleason argues that the failure to restrict the potential cross-examination of her prevented her from testifying. Basically, she asserts that the court should have restricted the cross-examination for two reasons. First, the Government was able to use the threat of perjury either to prevent Gleason from testifying or to force her to waive her rights under Fed. R. Crim. P. 11(e)(6)(C). Second, if Gleason did testify but did not mention the Keeling return on direct examination, any questions about that return on cross-examination would have been outside the scope of direct and therefore inadmissible under Rule 610 of the Federal Rules of Evidence.

We think both of Gleason's arguments are without merit. Rule 11(e)(6)(ii) of the Federal

Rules of Criminal Procedure specifically contemplates the use of a statement made by a defendant in a proceeding involving a guilty plea, which is later withdrawn, in a subsequent criminal proceeding for perjury. The prosecutor's "threat" of perjury, therefore, was nothing more than a statement of intent to do that which he had an express right to do.

Further, even if Gleason had testified without mentioning the Keeling return on direct examination, if she had represented that she did not know that any of the receipts that she had attached to returns were fraudulent, the Keeling return would relate to this testimony and could properly be addressed on cross-examination. The scope of questioning permissible on cross-examination is within the broad discretion of the district court. United States v. Schepp, 746 F.2d 406, 410 (8th Cir. 1984), cert. denied, 105 S.Ct. 1190 (1985); Villanueva v. Leininger, 707 F.2d 1007, 1010 (8th Cir. 1983) (per curiam). "Cross-

examination may embrace any matter germane to direct examination, qualifying or destroying it, or tending to elucidate, modify, explain, contradict or rebut testimony given by the witness." Roberts v. Hollocher, 664 F.2d 200, 203 (8th Cir. 1981). The district court did not abuse its discretion in refusing to limit the potential cross-examination of Gleason, especially when it could have expressly contradicted her testimony on direct.

V. Sufficiency of Evidence

Gleason's final contention before us is that the district court erred in denying her motions for a new trial, for arrest of judgment, and for judgment of acquittal based on her contention that the evidence as to Count Three of the Indictment was insufficient to sustain a guilty verdict. Count Three alleges that Gleason willfully and knowingly aided and assisted in preparing a fraudulent income tax return for Charles and Nora Blankenship for the 1980 tax year. Although

Gleason concedes that the Blankenship's tax return did contain fraudulent deductions, she contests the jury's finding that she acted willfully, with full knowledge of the fraudulent nature of the return. She asserts that her duties at the tax service were merely clerical, that she had no tax expertise, and that the Blankenships relied on Michael Gleason's advice in claiming the fraudulent deductions. In support of her contentions, Gleason points to the Blankenships' testimony that they had no direct conversations with her about the Universal Life Church, and to Charles Blankenship's failure to identify her in court at trial.

In reviewing the district court's denial of a motion for judgment of acquittal, this court must consider the evidence "in the light most favorable to the government and must give the government the benefit of all responsible inferences that may logically be drawn from the evidence." United States v. DeLuna, No. 83-2408, slip op. at 47

(8th Cir. May 10, 1985); see also United States v. Anziano, 606 F.2d 242-244 (8th Cir. 1979) (per curiam). In reviewing the evidence in the light most favorable to the Government, we conclude that the evidence as to Count Three was sufficient to sustain the jury verdict. Upon the Blankenships' initial visit to the tax service in March 1981, Lorraine Gleason conducted a preliminary interview to get information necessary to prepare their return. The Blankenships made no mention of any charitable contributions at that time. Lorraine Gleason was also present when her husband told the Blankenships that they needed a $9,000 deduction and discussed with them how they could get a receipt for a contribution from George Leigh. When Nora Blankenship later brought in a receipt obtained from Leigh representing that a $9,000 contribution had been made, Lorraine Gleason attached the receipt to a return that she had signed as the preparer, which already reflected that a $9,000 contribution had been made. That

Charles Blankenship could not identify Gleason at trial is not significant in light of the fact that he met her only once in 1981, and the trial took place three years later. No question exists as to whether Lorraine Gleason was actually the woman who assisted the Blankenships on their visit to Gleason's Tax and Accounting Service. From the evidence the jury could reasonably conclude that Gleason prepared the Blankenships' return knowing that a $9,000 contribution to the Universal Life Church had not been made in 1980, and that the receipt she attached to the return fraudulently represented that such a contribution had been made.

VII. Conclusion

Because we find Gleason's allegations of error to be without merit, and the evidence of her guilt overwhelming, we affirm her convictions.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS,

EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI

Defendant has been convicted as charged of the offense(s) of, with others, willfully and knowingly conspiring and agreeing together to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of income taxes in violation of 18 U.S.C. § 371, as charged in Count One of the indictment; and of willfully and knowingly aiding and assisting in the preparation of false income tax returns in violation of 26 U.S.C. § 7206(2) and 18 U.S.C. § 2, as charged in Counts Two and Three of the indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the

court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on Count One, with execution of all but six (6) months of sentence of imprisonment to be suspended and the period of incarceration to be followed by a period of probation of three (3) years to commence upon defendant's unconditional release from custody, all pursuant to 18 U.S.C. § 3651 (statute amended by stipulation of counsel). A fine of $1,000.00 is imposed and defendant is ordered to pay the costs of prosecution, $12,295.33, said fine and costs of prosecution to be paid in full by the end of the second year of probation or probation will be revoked.

On Counts Two and Three imposition of sentence of imprisonment is suspended and defendant is placed on probation for a period of three (3) years on each count pursuant to 18 U.S.C. § 3651, said periods of probation to be served concurrently with each other and with the period of probation imposed on Count One.